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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,198	06/24/2003	P. Michael Collins	MIK/06U	2217
26875	7590	06/01/2006		
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER A, PHI DIEU TRAN	
			ART UNIT 3637	PAPER NUMBER

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/602,198	COLLINS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Phi D. A	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,7,9,12,15,16,18,25 and 27-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-4, 6-7, 9, 12, 15-16, 18, 25, 27-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12, 15, 18, 35 rejected under 35 U.S.C. 102(b) as being anticipated by Braun (5127204).

Braun shows a surround device comprising a first leg (10), a second leg (1a), at least one frangible joint connecting the terminal end portion (4) to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the first and second legs are perpendicular to each other, the first and second legs are of dissimilar materials bonded together, terminal end portion (4) being generally coplanar with the remainder of the second leg (1d).

3. Claims 12, 15, 35, 36 rejected under 35 U.S.C. 102(b) as being anticipated by Braun (5127204).

Shaw shows a surround device comprising a first leg (3), a second leg (the leg below section 9 which is next to leg 3, figure 2), at least one frangible joint connecting the terminal end portion (figure 2) to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg (the section next to leg 3), the first and second legs are perpendicular to each other, terminal end portion being generally coplanar with the remainder of the second leg, the second leg further comprising a plurality of frangible joints

(9) spaced from one another, each adapted to be severed to remove the terminal end portion of the second leg.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Braun (5127204) in view of Farrell et al (6516573).

Braun shows all the claimed limitations except for the frangible joint comprising perforations in the second leg.

Ferrell et al discloses that having perforations (49) forming a frangible section and having a weakened joint (figure 6) forming a frangible section would both provide for the easy franging/breaking of the structure at the joint.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Braun's structure to show the frangible joint comprising perforations in the second leg because having perforations in place of a weakened section on a structure would both provide for a frangible joint which allows for easy breaking of the structure at the joint as taught by Ferrell et al.

6. Claims 1-4, 6, 9, 12-15, 18, 25-28, 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851) and Shaw (4837991).

Anastasi (figure 3) shows a cavity wall construction comprising a first wall (72), a second wall (60, 68) generally parallel to and spaced from the first wall, the second wall comprising of masonry units, an opening the first and second walls, the opening including spaced jambs (80) on opposite sides of the opening separated by a header atop the opening, a frame (90) sized and configured to fit within the opening, at least one surround device (16, 85) positioned at the juncture between the frame and one of the jambs and the header of the opening, a first leg (12) of each surround device being juxtaposed to an outer face of the first wall and a second leg (16) of each surround device being juxtaposed to the frame at one of the jambs and the header of the opening to thereby provide a transition from the frame to the second wall, the second leg having a terminal end portion (the end), a bead (108) of caulk positioned in the recess and sealing the juncture between the frame and the second wall, the first and second legs being generally perpendicular to each other, the opening is one of a window opening and a door opening and the frame is one of a window frame and a door frame, the first and second legs are of dissimilar materials bonded together, the device being L-shaped, the second leg of the device being inserted into the opening, a terminal end portion on the second leg of the surround device .

Anastasi does not show the second wall comprising courses of masonry units held together with mortar, a frangible connection(the mid section, the claim is not specific as to what structure constitutes frangible) joining the terminal end portion to a remainder of the second leg

Northrup Jr. discloses masonry units together with mortar.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's structure to show the second wall comprising courses of masonry units held together with mortar because mortar would provide easy and cheap bonding means

between adjacent blocks to keep them in place and secured to each other, and having multiple courses of units attached together would enable the blocks to form a wall high up from the ground without resorting to a massive block and thus resulting in cost saving.

7. Claims 1, 3, 4, 6, 25, 27-28, 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851) and Shaw (4837991).

Anastasi (figure 3) shows a cavity wall construction comprising a first wall (72), a second wall (60, 68) generally parallel to and spaced from the first wall, the second wall comprising of masonry units, an opening the first and second walls, the opening including spaced jambs (80) on opposite sides of the opening separated by a header atop the opening, a frame (90) sized and configured to fit within the opening, at least one surround device (16, 85) positioned at the juncture between the frame and one of the jambs and the header of the opening, a first leg (12) of each surround device being juxtaposed to an outer face of the first wall and a second leg (16) of each surround device being juxtaposed to the frame at one of the jambs and the header of the opening to thereby provide a transition from the frame to the second wall, the second leg having a terminal end portion (the end), a bead (108) of caulk positioned in the recess and sealing the juncture between the frame and the second wall, the first and second legs being generally perpendicular to each other, the opening is one of a window opening and a door opening and the frame is one of a window frame and a door frame, the device being L-shaped, the second leg of the device being inserted into the opening, a terminal end portion on the second leg of the surround device, the terminal end portion being generally coplanar with the remainder of the second leg.

Anastasi does not show the second wall comprising courses of masonry units held together with mortar, at least one frangible connection connecting the terminal end portion to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the terminal end portion is adapted to be removed along the frangible joint.

Northrup Jr. discloses masonry units together with mortar.

Shaw discloses a device having a first leg (3), a second leg (the leg with joints 9) having at least one frangible connection connecting the terminal end portion to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the terminal end portion is adapted to be removed along the frangible joint to allow for the breaking of the device to compensate for different dimension requirement.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's structure to show the second wall comprising courses of masonry units held together with mortar, at least one frangible connection connecting the terminal end portion to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the terminal end portion is adapted to be removed along the frangible joint because mortar would provide easy and cheap bonding means between adjacent blocks to keep them in place and secured to each other, and having multiple courses of units attached together would enable the blocks to form a wall high up from the ground without resorting to a massive block and thus resulting in cost saving, and having a second leg with frangible sections would allow for the second leg to compensate for different dimension/length requirement when attached to the construction unit as taught by Shaw.

8. Claims 7, 9, 16, 18, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851), Shaw (4837991), Trout (6993874) and Farrell et al (6516573).

Anastasi (figure 3) shows a cavity wall construction comprising a first wall (72), a second wall (60, 68) generally parallel to and spaced from the first wall, the second wall comprising of masonry units, an opening the first and second walls, the opening including spaced jambs (80) on opposite sides of the opening separated by a header atop the opening, a frame (90) sized and configured to fit within the opening, at least one surround device (16, 85) positioned at the juncture between the frame and one of the jambs and the header of the opening, a first leg (85) of each surround device being juxtaposed to an outer face of the first wall and a second leg (16, 12) of each surround device being juxtaposed to the frame at one of the jambs and the header of the opening to thereby provide a transition from the frame to the second wall, the second leg having a terminal end portion (the end close to the part 108), a bead (108) of caulk positioned in the recess and sealing the juncture between the frame and the second wall, the opening is one of a window opening and a door opening and the frame is one of a window frame and a door frame, the device being L-shaped, the second leg of the device being inserted into the opening, a terminal end portion on the second leg of the surround device, the first and second legs being of dissimilar materials bonded together, the first leg being mounted to the outer face of the first wall

Anastasi does not show the second wall comprising courses of masonry units held together with mortar, one frangible connection connecting the terminal end portion to a remainder of the second leg, the terminal end portion is adapted to be removed along the frangible connection and thereby reveal a recess at a junction adjacent the frame, the remainder



of the second leg and one of the jambs and the header of the opening, the second leg being a closed cell foam material and the frangible connection comprising perforations in the closed cell foam material.

Northrup Jr. discloses masonry units together with mortar.

Shaw discloses a device having a first leg (3), a second leg (the leg with joints 9) having at least one frangible connection connecting the terminal end portion to a remainder of the second leg, the second leg being more readily broken at the frangible joint than at the remainder of the second leg, the terminal end portion is adapted to be removed along the frangible joint to allow for the breaking of the device to compensate for different dimension requirement, the device being made of rubber.

Trout shows a surrounding device having a leg (12, 14) made of closed cell foam material to allow for the compensation of the expansion and contraction of the joint.

Ferrell et al discloses that having perforations (49) forming a frangible section and having a weakened joint (figure 6) forming a frangible section would both provide for the easy franging/breaking of the structure at the joint.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's structure to show the second wall comprising courses of masonry units held together with mortar, one frangible connection connecting the terminal end portion to a remainder of the second leg, the terminal end portion is adapted to be removed along the frangible connection and thereby reveal a recess at a junction adjacent the frame, the remainder of the second leg and one of the jambs and the header of the opening, the second leg being a closed cell foam material and the frangible connection comprising perforations in the closed cell

foam material because mortar would provide easy and cheap bonding means between adjacent blocks to keep them in place and secured to each other, and having multiple courses of units attached together would enable the blocks to form a wall high up from the ground without resorting to a massive block and thus resulting in cost saving, and having a second leg with frangible sections would allow for the second leg to compensate for different dimension/length requirement when attached to the construction unit as taught by Shaw, and having the device made of closed cell foam would allow the device compensate for the expansion and contraction at the joint as taught by Trout, and having perforations in place of a weakened section on a structure would both provide for a frangible joint which allows for easy breaking of the structure at the joint as taught by Ferrell et al.

9. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851) and Shaw (4837991) as applied to claim 1 above and further in view of Ferrell et al.

Anastasi as modified shows all the claimed limitations except for the frangible joint comprising perforations in the second leg.

Ferrell et al discloses that having perforations (49) forming a frangible section and having a weakened joint(figure 6) forming a frangible section would both provide for the easy franging/breaking of the structure at the joint.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's modified structure to show the frangible joint comprising perforations in the second leg because having perforations in place of a weakened section on a

structure would both provide for a frangible joint which allows for easy breaking of the structure at the joint as taught by Ferrell et al.

***Response to Arguments***

10. Applicant's arguments with respect to claims 1, 3-4, 6-7, 9, 12, 15-16, 18, 25, 27-37 have been considered but are moot in view of the new ground(s) of rejection.

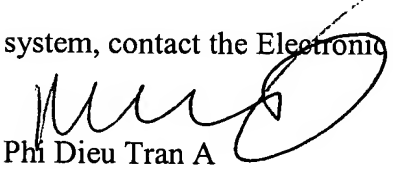
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different sealing device for windows and doors wall frame.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Phi Dieu Tran A

5/27/06